

Senate Daily Reader

Wednesday, February 05, 2003

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State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

394I0114

SENATE JUDICIARY COMMITTEE ENGROSSED NO. **HB 1048** - 02/03/2003

Introduced by: The Committee on Judiciary at the request of the Chief Justice

1 FOR AN ACT ENTITLED, An Act to make threatening court services officers a crime.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 22-11-15 be amended to read as follows:

4 22-11-15. Any person who, directly or indirectly, utters or addresses any threat or
5 intimidation to any judicial or ministerial officer, juror, ~~referee, arbitrator, umpire, or director of~~
6 ~~equalization~~, or other person authorized by law to hear or determine any controversy, or any
7 court services officer, with intent to induce ~~him~~ such person either to do any act not authorized
8 by law, or to omit or delay the performance of any duty imposed upon ~~him~~ such person by law,
9 or for having performed any duty imposed upon ~~him~~ such person by law, is guilty of a Class 5
10 felony.



State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

394I0117

SENATE JUDICIARY COMMITTEE ENGROSSED NO. **HB 1049** - 02/03/2003

Introduced by: The Committee on Judiciary at the request of the Chief Justice

1 FOR AN ACT ENTITLED, An Act to invest the court with discretion to provide for the
2 overnight supervision of juries.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 23A-25-5 be amended to read as follows:

5 23A-25-5. Before the jurors retire for deliberation, one or more officers ~~must~~ shall be sworn
6 to keep ~~them~~ the jurors together in some private and convenient place, with such suitable food
7 and drink as the court shall direct. The court may, in its discretion, ~~permit the jurors to separate~~
8 either sequester the jurors during the adjournment of court overnight, under supervision of the
9 officer or such officers, or allow the jurors to separate overnight during the adjournment of the
10 court without supervision after proper admonishment. The While supervising the jurors, the
11 officers ~~shall~~ may not permit any person (including themselves) to communicate with the jurors
12 or to ask whether ~~they~~ the jurors have agreed upon a verdict except by order of court. The
13 officers shall return the jurors into court when ~~they have~~ the jury has agreed upon a verdict.



State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

673I0302

SENATE JUDICIARY COMMITTEE ENGROSSED NO. **HB 1060** - 02/03/2003

Introduced by: Representatives Hennies, Cutler, Lintz, Madsen, Nesselhuf, and Schafer and
Senators Albers, Abdallah, Duniphan, Ham, Kelly, and Kooistra

1 FOR AN ACT ENTITLED, An Act to require annual reregistration of certain sex offenders.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 Any person who is subject to the provisions of § 22-22-31 shall annually reregister in the
6 same manner as may be provided by law for initial registration. Such person shall reregister
7 during the calendar month during which the registrant was born. However, if such person has
8 previously registered pursuant to the provisions of § 22-22-31 within ninety days immediately
9 prior to the date of such person's birth, no subsequent reregistration is required pursuant to this
10 section during the current annual reregistration cycle.

11 A violation of this section is a Class 1 misdemeanor. However, any subsequent violation is
12 a Class 6 felony.

13 Section 2. That § 22-22-37 be repealed.

14 ~~— 22-22-37. Any person required to register pursuant to §§ 22-22-30 to 22-22-39, inclusive,~~
15 ~~shall annually register with the local law enforcement agency having jurisdiction of the person's~~



- 1 ~~residence verifying the information given pursuant to § 22-22-32. A violation of this section is~~
- 2 ~~a Class 1 misdemeanor. Any second or subsequent violation of this section is a Class 6 felony.~~

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

556I0285

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1061 - 02/03/2003

Introduced by: Representatives Hennies, Madsen, and McCaulley and Senators Vitter, Abdallah, Albers, Duniphan, Reedy, and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to provide for the crime of bestiality and to prescribe certain
2 penalties therefor.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 No person, for the purpose of that person's sexual gratification, may:

7 (1) Engage in a sexual act with an animal; or

8 (2) Coerce any other person to engage in a sexual act with an animal; or

9 (3) Engage in a sexual act with an animal in the presence of a minor; or

10 (4) Use any part of the person's body or an object to sexually stimulate an animal; or

11 (5) Videotape a person engaging in a sexual act with an animal; or

12 (6) Kill or physically abuse an animal.

13 Any person who violates any provision of this section is guilty of the crime of bestiality.

14 Bestiality is a Class 6 felony. However, if any person has been previously convicted of a sex
15 crime pursuant to § 22-22-30, any subsequent violation of this section is a Class 5 felony.



1 Section 2. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as
2 follows:

3 For the purposes of section 1 of this Act, the term, sexual act with an animal, means any act
4 between a person and an animal involving direct physical contact between the genitals of one and
5 the mouth or anus of the other, or direct physical contact between the genitals of one and the
6 genitals of the other. A sexual act with an animal may be proved without evidence of penetration.

7 Section 3. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as
8 follows:

9 The provisions of section 1 of this Act do not apply to or prohibit normal, ordinary, or
10 accepted practices involved in animal husbandry, artificial insemination, or veterinary medicine.

11 Section 4. That § 22-22-30 be amended to read as follows:

12 22-22-30. For the purposes of §§ 22-22-31 to 22-22-39, inclusive, a sex crime is any of the
13 following crimes regardless of the date of the commission of the offense or the date of
14 conviction:

- 15 (1) Rape as set forth in § 22-22-1;
- 16 (2) Sexual contact with a minor under sixteen as set forth in § 22-22-7 if committed by
17 an adult and the adult is convicted of a felony;
- 18 (3) Sexual contact with a person incapable of consenting as set forth in § 22-22-7.2 if
19 committed by an adult;
- 20 (4) Incest as set forth in § 22-22-19.1 if committed by an adult;
- 21 (5) Possessing, manufacturing, or distributing child pornography as set forth in
22 § 22-22-24.2;
- 23 (6) Sale of child pornography as set forth in § 22-22-24;
- 24 (7) Sexual exploitation of a minor as set forth in § 22-22-24.3;

1 (8) Kidnapping, as set forth in § 22-19-1, if the victim of the criminal act is a minor;

2 (9) Promotion of prostitution of a minor as set forth in subdivision 22-23-2 (2);

3 (10) Criminal pedophilia as set forth in § 22-22-30.1;

4 (11) Felony indecent exposure as set forth in former § 22-24-1 or indecent exposure as set
5 forth in § 22-24-1.2;

6 (12) Solicitation of a minor as set forth in § 22-22-24.5;

7 (13) Bestiality as set forth in section 1 of this Act;

8 (14) An attempt to commit any of the crimes listed in this section;

9 ~~(14)~~(15) Any crime committed in a place other than this state which would constitute
10 a sex crime under this section if committed in this state;

11 ~~(15)~~(16) Any federal crime or court martial that would constitute a sex crime under
12 federal law; or

13 ~~(16)~~(17) Any crime committed in another state if that state also requires that anyone
14 convicted of that crime register as a sex offender in that state.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

655I0052

SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB 8 - 02/03/2003**

Introduced by: Senators Moore, de Hueck, Ham, Kleven, Koskan, and Nachtigal and
Representatives Hennies, Konold, Madsen, Murschel, Van Gerpen, and Wick
at the request of the Interim Juvenile Offenses and Sentencing Committee

1 FOR AN ACT ENTITLED, An Act to reconstitute the Juvenile Justice and Delinquency Act
2 Advisory Group and to revise its authority and responsibilities.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 1-15-28 be amended to read as follows:

5 1-15-28. The Department of Corrections shall be responsible, through the ~~state advisory~~
6 ~~group~~ Council of Juvenile Services established in § 1-15-29, for supervising the preparation and
7 administration of the state's plan required by Section 223(a) for participation in the formula
8 grants program of the Act. The Department of Corrections shall be responsible for providing
9 staff and support services to the ~~state advisory group~~ Council of Juvenile Services and
10 implementing the plan in a manner which will ensure compliance with Sections 223(a)(12), (13),
11 and (14) of the Act. The department shall seek necessary authority and take all necessary action
12 as provided by law to enforce compliance with the Act.

13 Section 2. That § 1-15-29 be amended to read as follows:

14 1-15-29. There is hereby established a twenty-member ~~state advisory group~~ Council of



1 Juvenile Services to be appointed by the Governor and shall be comprised of individuals who
2 have training, experience, or special knowledge of juvenile delinquency prevention or treatment
3 or of the administration of juvenile justice. The membership of the ~~advisory group~~ Council of
4 Juvenile Services shall comply with Section 223(a)(3) of the Juvenile Justice and Delinquency
5 Act. The initial members to be appointed shall draw lots to determine who will hold the eight
6 three-year terms, the six two-year terms, and the six one-year terms. Thereafter, each member
7 shall serve ~~terms~~ a term of three years. Members may be reappointed and may continue to serve
8 an expired term until replaced by the Governor. A chairperson, who may not be a full-time
9 federal, state, or local employee, for the ~~advisory group~~ Council of Juvenile Services shall be
10 chosen annually by a majority vote of its members at the first meeting each fiscal year.

11 Section 3. That § 1-15-30 be amended to read as follows:

12 1-15-30. The ~~state advisory group~~ Council of Juvenile Services shall be responsible for the
13 following:

- 14 (1) In conjunction with the secretary of the Department of Corrections, establish policy
15 on how the formula grants program of the Juvenile Justice and Delinquency Act is to
16 be administered in South Dakota;
- 17 (2) Approve the state plan, and any modifications thereto, required by 223(a) of the Act
18 prior to submission to the Office of Juvenile Justice and Delinquency Prevention;
- 19 (3) Submit annual recommendations to the Governor and Legislature concerning the
20 functions of the ~~advisory group~~ Council of Juvenile Services and the status of the
21 state's compliance with the Act;
- 22 (4) Approve or disapprove grant applications and other funding requests submitted to the
23 Department of Corrections under §§ 1-15-27 to 1-15-31, inclusive, and assist with
24 monitoring grants and other fund awards;

- 1 (5) Assist the Department of Corrections in monitoring the state's compliance with the
2 Act;
- 3 (6) Study the coordination of the various juvenile intervention, prevention, treatment, and
4 rehabilitation programs;
- 5 (7) Study effective juvenile sentencing, adjudication, and diversion policies and
6 provisions;
- 7 (8) Make a special study of, and make an annual report to the Governor, the Unified
8 Judicial System, and the Legislature by June thirtieth of each year concerning, the
9 appropriate administration of and provision for children in need of supervision in this
10 state;
- 11 (9) Contact and seek regular input from juveniles currently under the jurisdiction of the
12 juvenile justice system; and
- 13 ~~(7)~~(10) Perform other such activities as determined by the Governor, the secretary of
14 the Department of Corrections, or the Council of Juvenile Services.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

707I0298

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 33** - 01/29/2003

Introduced by: The Committee on Commerce at the request of the Attorney General

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to telemarketing.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 37-30A-8 be amended to read as follows:

4 37-30A-8. The provisions of this chapter do not apply to a transaction:

5 (1) Made by a merchant who operates an established business that has a fixed permanent
6 location~~and~~, who displays or offers consumer goods or services for sale on a
7 continuing basis, and who makes less than two hundred unsolicited consumer
8 telephone calls per year;

9 (2) In which the business establishment making the solicitation is establishing a
10 business-to-business relationship or has a clear, preexisting business relationship with
11 the consumer, if that relationship resulted in the consumer becoming aware of the full
12 name, business address, and telephone number of the establishment;

13 (3) In which the consumer purchases goods or services pursuant to an examination of a
14 television, radio, or print advertisement or a sample, brochure, catalog, or other
15 mailing material of the telemarketer that contains:



- 1 (a) The name, address, and telephone number of the telemarketer;
- 2 (b) A full description of the goods or services being sold along with a list of all
- 3 prices or fees being requested, including any handling, shipping, sales tax, or
- 4 delivery charges; and
- 5 (c) Any limitations or restrictions that apply to the offer.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

707I0332

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 41** - 01/29/2003

Introduced by: The Committee on Commerce at the request of the Public Utilities
Commission

1 FOR AN ACT ENTITLED, An Act to provide for the creation of a no solicitation calls list for
2 persons wishing not to receive unsolicited telephone calls, to create a telephone solicitation
3 account, and to establish certain fees and civil penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 49-31-1 be amended to read as follows:

6 49-31-1. Terms used in this chapter mean:

7 (1) "Addressable," enabling users to connect and communicate with a specific party easily
8 and securely on a dial-up, addressable basis;

9 (2) "Available," ensuring that network services are available if the user requires them,
10 even at times of peak usage; designed to be a nonblocking network, minimizing
11 network contention;

12 (3) "Broadband network," the broadband network extends the range of fully switched,
13 addressable, robust transport services over the fiber network which increase in
14 multiples of OC-1 (51.84 Mbps), including OC-3 (155.52 Mbps) and OC-12 (622.08
15 Mbps);



- 1 (4) "Centron and centron-like services," services which provide custom switching features
2 which include distributive dial tone, select number screening, toll restriction and
3 screening, nonattendant busy out, nonattend and call transfer, and select trunk hunting
4 and screening;
- 5 (5) "Commission," the Public Utilities Commission;
- 6 (6) "Common carrier," anyone who offers telecommunications services to the public;
- 7 (7) "Eligible telecommunications carrier," a local exchange carrier designated by the
8 commission pursuant to 47 U.S.C. § 214(e) as of January 1, 1998, as eligible to
9 receive universal service support funding;
- 10 (8) "Feature rich," providing the specific features and functionality required by users'
11 voice, data, video, graphics, imaging, and multimedia applications; functionally
12 beyond mere transport;
- 13 (9) "Incumbent local exchange carrier," a local exchange carrier, including successors and
14 assigns, which was providing local exchange service within a defined service area in
15 this state on or before February 8, 1996;
- 16 (10) "Interexchange telecommunications service," telecommunications service between
17 points in two or more exchanges;
- 18 (11) "LATA," a local access and transport area;
- 19 (12) "Local exchange area," a any geographic area established by a local exchange carrier
20 as filed with or approved by the commission for the administration of local
21 telecommunications service which may consist of one or more central offices or wire
22 centers together with associated facilities used in furnishing telecommunications
23 service in that area;
- 24 (13) "Local exchange service," the access to and transmission of two-way switched

1 telecommunications service within a local exchange area;

2 (14) "Narrowband network," a fully switched digital network covering the transport range
3 from 0 to 144,000 bits per second (144 Kbps), offering two 64 Kbps information B
4 (Bearer) channels and a 16 Kbps signaling D (Delta) channel;

5 (15) "New products and services," any new product or service introduced after July 1,
6 1988, which is not functionally required to provide local exchange service.
7 Repackaging of any product or service which is fully competitive with any service
8 regulated as emerging competitive or noncompetitive is not considered a new product
9 or service;

10 (16) "Optional service," a any limited or discretionary service offered by a
11 telecommunications company which is not functionally required for the provision of
12 noncompetitive services and which the customer has the option to purchase;

13 (17) "Private," ensuring confidentiality and integrity of network transport of messages
14 without dependency on specialized customer premise security devices;

15 (18) "Rate of return regulation," the procedure used by the commission to approve the
16 charge for a service which gives due consideration to the public need for adequate,
17 efficient, and reasonable service and to the need of the public utility for revenues
18 sufficient to enable it to meet its total current cost of furnishing such service, including
19 taxes and interest, and including adequate provision for depreciation of its utility
20 property used and necessary in rendering service to the public, and to earn a fair and
21 reasonable return upon the value of its property;

22 (19) "Register," a list of names, addresses, and telephone numbers of residential telephone
23 subscribers who have properly enrolled to prevent unsolicited telephone calls;

24 (20) "Residential telephone subscriber," any person residing in the state who has residential

1 telephone service;

2 (21) "Robust," easily and economically sustaining the rigors of growth and extensive public
3 use;

4 ~~(20)~~(22) "Rural telephone company," a any local exchange company as defined in 47
5 U.S.C. § 153(37) as of January 1, 1998;

6 ~~(21)~~(23) "Secure," physically precluding unwanted access to network and information;

7 ~~(22)~~(24) "Service area," a geographic area established by the commission for the
8 purpose of determining universal service obligations and support mechanisms.

9 For a rural telephone company, the service area is the company's study area or
10 any other area designated jointly by the commission and the Federal
11 Communications Commission pursuant to 47 U.S.C. § 214(e)(5) as of
12 January 1, 1998;

13 ~~(23)~~(25) "Standard," supporting universal interfaces and networking standards and
14 protocols of generally accepted standards setting bodies;

15 ~~(24)~~(26) "Switched," providing circuit, packet, or channel type switching, each suited
16 to specific application requirements;

17 ~~(25)~~(27) "Switched access," ~~an~~ any exchange access service purchased for the
18 origination and termination of interexchange telecommunications services
19 which includes central office switching and signaling, local loop facility, or
20 local transport;

21 ~~(26)~~(28) "Telecommunications company," any person or municipal corporation owning,
22 operating, reselling, managing, or controlling in whole or in part, any
23 telecommunications line, system, or exchange in this state, directly or
24 indirectly, for public use. For purposes of this definition the term, for public

1 use, means for the use of the public in general or for a specific segment of the
2 public, or which connects to the public in general or for a specific segment of
3 the public, or which connects to the public switched network for access to any
4 telecommunications service;

5 ~~(27)~~(29) "Telecommunications service," the transmission of signs, signals, writings,
6 images, sounds, messages, data, or other information of any nature by wire,
7 radio, lightwaves, electromagnetic means, or other similar means. It does not
8 include the provision of terminal equipment used to originate or terminate such
9 service, broadcast transmissions by radio, television, and satellite stations
10 regulated by the Federal Communications Commission and one-way cable
11 television service;

12 (30) "Telephone solicitation call," any call made to a South Dakota consumer by a
13 telephone solicitor, originating from South Dakota or elsewhere, for the purpose of
14 soliciting a sale of any consumer goods or services to the person called, for the
15 purpose of soliciting an extension of credit for consumer goods or services to the
16 person called, or for the purpose of obtaining information that may be used for the
17 direct solicitation of a sale of consumer goods or services to the person called or an
18 extension of credit for such purposes;

19 (31) "Telephone solicitor," any person or organization who individually or through
20 salespersons, makes or causes to be made a telephone solicitation call. This term does
21 not include any not-for-profit or charitable organization exempt from federal income
22 taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 as of
23 January 1, 2003, which makes telephone calls solely to solicit a charitable donation;

24 (32) "Unsolicited telephone call," any telephone solicitation call other than a call made:

- 1 (a) In response to an express request of the person called;
- 2 (b) Primarily in connection with an existing debt or contract, payment or
- 3 performance of which has not been completed at the time of such call;
- 4 (c) To any person with whom the telephone solicitor, or any business on whose
- 5 behalf the telephone call is being made has an established business relationship
- 6 or a business relationship that existed within the immediately preceding twelve
- 7 months; or
- 8 (d) To any person for the purpose of obtaining information and establishing a date
- 9 and time for an appointment with the telephone solicitor which will take place
- 10 at the solicitor's place of business or the consumer's home and the call is not
- 11 made by an automated telephone dialing system. For purposes of this
- 12 subsection, an automated telephone dialing system is any automatic terminal
- 13 equipment that stores or produces numbers to be called randomly or
- 14 sequentially;
- 15 ~~(28)~~(33) "Wideband network," the wideband network extends the range of fully
- 16 switched, digital, addressable information transport from the 144 Kbps to the
- 17 DS3 rate of 44.736 Mbps, including the DS1 and DS2 rates of 1.544 Mbps and
- 18 6.312 Mbps, respectively.

19 Section 2. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as

20 follows:

21 Any telephone solicitor who makes unsolicited telephone calls shall institute procedures that

22 comply with the provisions of this Act for obtaining a list of persons who do not wish to receive

23 unsolicited telephone calls made by or on behalf of the telephone solicitor. No telephone solicitor

24 who makes unsolicited telephone calls may call any number listed on the register. The

1 commission may promulgate rules, pursuant to chapter 1-26, concerning procedures and
2 requirements regarding the implementation of a register, setting of fees for purchase of the
3 register, form of the application, requirements for acquiring a copy of the register, requirements
4 for enrollment on and removal from the register, procedures for maintaining a register, setting
5 of fees to enroll or renew enrollment on the register, procedures for operating the register,
6 standards concerning the use of the register, and application of the civil fines.

7 Section 3. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
8 follows:

9 The commission shall maintain a register of names, addresses, and telephone numbers of each
10 South Dakota residential telephone subscriber who has elected not to receive unsolicited
11 telephone calls.

12 Section 4. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 Any telephone solicitor who makes unsolicited telephone calls to South Dakota residential
15 telephone subscribers shall obtain a copy of the register from the commission. The register shall
16 be updated not more often than quarterly. Each telephone solicitor shall submit an application
17 to the commission to obtain a copy of the register. Any telephone solicitor desiring to make an
18 unsolicited telephone call shall update his or her copy of the register within thirty days after the
19 receipt of the register.

20 Section 5. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
21 follows:

22 Any telephone solicitor who makes unsolicited telephone calls to South Dakota residential
23 telephone subscribers shall pay to the commission an annual fee of not more than five hundred
24 dollars. Fees collected under this section shall be credited to the telephone solicitation account

1 which is hereby established in the state treasury. Any interest earned on money in the fund shall
2 be deposited in the fund. The money is continuously appropriated to the use of the commission
3 to implement and administer the provisions of this Act.

4 Section 6. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 The commission shall establish or provide for the operation of a register. The register may
7 be operated by the commission or by another entity under contract with the commission. A
8 residential telephone subscriber may enroll on the register in accordance with procedures
9 prescribed by the commission. A subscriber shall pay to the commission a fee, set pursuant to
10 section 2 of this Act, of not more than five dollars to be listed on the register. Fees collected
11 under this section shall be credited to the telephone solicitation account established in section 5
12 of this Act.

13 Section 7. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
14 follows:

15 Notwithstanding the provisions of chapter 49-1A, the commission may use amounts
16 deposited in the gross receipts tax fund to implement this Act. All funds used shall be returned
17 to the gross receipts tax fund within three years of implementation of the register.

18 Section 8. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
19 follows:

20 Any telecommunications company that provides local exchange service shall inform its
21 customers of the provisions of this Act by publication of the notice in the consumer pages of its
22 telephone directories.

23 Section 9. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
24 follows:

1 Any person who violates this Act or any rules promulgated pursuant to this Act is subject
2 to a civil penalty to be imposed by the commission, after notice and opportunity for hearing. The
3 commission may impose a civil fine of not more than five thousand dollars for each offense. In
4 determining the amount of the penalty upon finding a violation, or the amount of a compromise
5 settlement, the commission shall consider the appropriateness of the penalty to the size of the
6 business of the person charged, prior offenses and compliance history, and the good faith of the
7 person charged in attempting to achieve compliance. Any telephone solicitation made to a person
8 whose name first appears on the register is not a violation of this Act if the solicitation is made
9 within thirty days of the receipt of the register. Any penalty collected pursuant to this section
10 shall be credited to the telephone solicitation account established pursuant to section 5 of this
11 Act.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

364I0179

SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB 60** - 02/03/2003

Introduced by: Senators Kooistra, Abdallah, Earley, Kloucek, Koetzle, Moore, and Olson
(Ed) and Representatives Christensen, Michels, and Nesselhuf

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to child custody and to
2 provide for a shared parenting plan.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 25-4A-10 be amended to read as follows:

5 25-4A-10. The South Dakota Supreme Court shall promulgate court rules establishing
6 standard guidelines to be used statewide for child visitation in divorce or separate maintenance
7 actions or any other custody action or proceeding. The standard guidelines shall reflect a
8 parenting schedule that allows the child to have regularly occurring, meaningful periods of
9 physical placement with each parent, taking into account geographic separation and
10 accommodations for different households. These guidelines shall provide a framework for child
11 visitation including frequency and time for child visitation; hours or days of visitation; definitions
12 for weekends, holidays, birthdays, and other special occasions; and time periods for summer
13 visitations. In establishing the standard guidelines, the court may consider varying ages and
14 circumstances of children and treat varying ages and circumstances differently.

15 Section 2. That § 25-4A-11 be amended to read as follows:



25-4A-11. Upon the filing of a summons and complaint for divorce or separate maintenance or any other custody action or proceeding, the plaintiff shall also file and serve upon the defendant a copy of the standard guidelines. The standard guidelines attached to the summons shall become an order of the court upon fulfillment of the requirements of service. ~~Any minor child of the marriage shall remain in the custody of the parent who has been the primary caregiver for the minor child for the majority of time in the thirty days preceding the filing of the summons and complaint, unless the parties agree otherwise.~~ The standard guidelines shall apply and continue in effect, unless the parties agree, or the court orders otherwise. Imposition of the standard guidelines creates no presumption as to who shall be awarded custody at any hearing.

Section 3. That chapter 25-5 be amended by adding thereto a NEW SECTION to read as follows:

If the court deviates from standard guidelines, the court shall make findings as to:

- (1) The likelihood of serious physical or emotional harm to the child if placed in the parent's custody;
- (2) A history of abuse or neglect as defined in § 26-8A-2, domestic abuse as defined in § 25-10-1, or any problem with alcohol or drug abuse;
- (3) The lack of ability of either parent to provide for a child's physical, emotional, and other needs over a significant period of time;
- (4) The lack of a bonded relationship between the child and either parent, sufficient to cause emotional harm to the child;
- (5) Any situation that would cause significant instability and insecurity in the child's future with either parent;
- (6) The lack of cooperation and communication between the parties and whether either party unreasonably refuses to cooperate or communicate with the other party;

- 1 (7) The pattern of involvement of the parties with the child that does not reflect a system
2 of values, time commitment, and mutual support;
- 3 (8) The lack of ability of either party to encourage the sharing of love, affection, and
4 contact between the child and the other party;
- 5 (9) An impairment to a child's right to an education while in the custody of either parent;
- 6 (10) That either parent has abandoned or persistently neglected the child;
- 7 (11) A demonstrated lack of either parent's commitment to raising the child;
- 8 (12) That either parent has forfeited or surrendered their parental rights over the child; or
- 9 (13) Any other circumstance that would substantially and adversely impact the welfare of
10 the child.

11 In all parenting arrangements, one parent's home shall be designated as the primary address
12 for the child.

13 Section 4. That chapter 25-5 be amended by adding thereto a NEW SECTION to read as
14 follows:

15 If an alternative parenting arrangement is ordered, the court shall state on the record why its
16 findings are in the best interest of the child.

17 Section 5. That § 25-5-13 be amended to read as follows:

18 25-5-13. ~~A parent entitled to the custody of a child has the right to change his residence,~~
19 ~~subject to the power of the circuit court to restrain a removal which would prejudice the rights~~
20 ~~or welfare of the child. Any person entitled to parenting time with a child shall give notice of any~~
21 proposed relocation of the residence of the child to another state or a distance greater than
22 seventy-five miles. The notice shall be in writing by certified mail, return receipt requested, to
23 any party that has parenting time rights. Absent exigent circumstances as determined by a court
24 with jurisdiction, written notice shall be provided at least thirty days before the proposed

1 relocation. The notice of the proposed relocation shall include the following information: the city
2 and state to which the relocation is proposed, the date of the intended move, the reasons for
3 moving, a proposed parenting plan, and the procedure to be followed if the parent objects to the
4 relocation.

5 The residence of the child may be relocated thirty days after providing notice, as required by
6 this section, unless a party entitled to parenting time with a child files a motion seeking an order
7 to prevent the relocation within fifteen days after receipt of such notice. An affidavit setting forth
8 the specific basis for prohibiting the relocation shall be attached to the motion. The person
9 seeking the relocation shall respond to the motion within ten days, unless the court extends the
10 response time for good cause, and provide a counter affidavit setting forth the facts in support
11 of the relocation and the proposed revised parenting plan for the child.

12 If relocation is permitted, the court shall order contact with the nonrelocating party including
13 parenting time and telephone access sufficient to assure that the child has frequent, continuing,
14 and meaningful contact with the nonrelocating party unless such contact is detrimental to the
15 child.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

419I0131

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SCR 3** - 02/03/2003

Introduced by: Senators LaPointe, Abdallah, Albers, Bogue, Brown, de Hueck, Duniphan, Earley, Greenfield, Ham, Jaspers, Kelly, Kleven, Knudson, Kooistra, Koskan, McCracken, Moore, Napoli, Olson (Ed), Schoenbeck, Sutton (Duane), and Vitter and Representatives Juhnke, Garnos, McCaulley, Teupel, and Valandra

1 A CONCURRENT RESOLUTION, Petitioning the Secretary of the United States Department
2 of Transportation to promulgate a regulation placing all of Jones, Mellette, and Todd
3 Counties within the central standard time zone.

4 WHEREAS, Mellette and Todd Counties and the western portion of Jones County are
5 currently located in the mountain standard time zone; and

6 WHEREAS, the vast majority of the residents of these counties observe central standard time
7 instead of the mountain standard time because of their commercial and social ties to communities
8 located in the central standard time zone; and

9 WHEREAS, there would be much less confusion and it would be much more convenient for
10 the commerce of these counties if these counties were located in the central standard time zone:

11 NOW, THEREFORE, BE IT RESOLVED, by the Senate of the Seventy-eighth Legislature
12 of the State of South Dakota, the House of Representatives concurring therein, that the
13 Secretary of the United States Department of Transportation review the present location of the
14 time zone boundary through central South Dakota, pursuant to 15 U.S.C. § 261, and give



1 serious consideration to revising federal regulations to place all of Jones County, Mellette
2 County, and Todd County, South Dakota, within the central standard time zone; and

3 BE IT FURTHER RESOLVED, that the Secretary of the Senate send copies of this
4 Resolution to the United States Secretary of Transportation and to each member of the South
5 Dakota Congressional Delegation.